**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 2479 of 1999**

**For Approval and Signature:**
**HONOURABLE MR.JUSTICE K.M.THAKER**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**KIRPAL RUPCHAND KOTWANI - Petitioner(s)**
**Versus**
**JUNAGADH MUNICIPALITY & 2 - Respondent(s)**

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**Appearance :**
MR MEHUL S SHAH for Petitioner(s) : 1,MR SURESH M SHAH for Petitioner(s) : 1,
NANAVATY ADVOCATES for Respondent(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 2,
MR LR PATHAN for Respondent(s) : 3,

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**CORAM : HONOURABLE MR.JUSTICE K.M.THAKER**

**Date : 06/12/2007**

**ORAL JUDGMENT**

1. Leave to amend the cause title and the prayer clause.

2. The petitioner in present petition is resident of Junagadh. The petitioner has approached this

Court against the alleged inaction on the part of the respondent No.1 – Municipal Corporation despite the fact that petitioner has drawn attention of the respondent No.1 - Municipal Corporation towards the construction carried out by respondent No.3, which, according to the petitioner, is illegal or at least irregular and contrary to the bye-laws of Corporation.

2.1 The said allegation of the petitioner is vehemently opposed by respondent No.3.

2.2 The legality or otherwise of the construction in question is not in issue in present petition. All that the petitioner prays, as clarified by Mr. Shah during his submission, is that the respondent No.1 Municipal Corporation must look into the matter and decide as to whether the construction in question is in accordance with applicable provisions, including bye-laws, permission, regulations, etc., or not and if after such inquiry it is found that the construction is not in accordance with law, then, appropriate action in accordance with law must be taken.

2.3 Mr. Buch, Advocate appearing for Nanavati Advocates for respondent No.1 – Municipal Corporation, submits that the Corporation cannot have and does not have any objection against such a prayer.

2.4 In view of the averments made by the petitioner-particularly, in para – 5 of the petition-that the petitioner is the user of the street, on the side of which the alleged illegal construction is carried out by respondent No.3 and he, along with other residents of the Corporation is adversely affected by the said construction, and in light of the relief prayed for by the petitioner in present petition, it emerges after hearing Mr. Shah, Advocate for petitioner and Mr. L.R.Pathan, Advocate for respondent No.3 as well as Mr. Buch, Advocate for Nanavaty Advocates, for respondent No.1 at length, that this petition can be disposed off with following directions which would meet the ends of justice.

3. After hearing concerned parties, and upon taking into account the submission of Mr. Shah, Advocate for petitioner, it is directed that:-

(i) the respondent No.1 – Municipal Corporation shall take into account and consider the complaint made by the petitioner with regard to the construction carried out by respondent No.3 and shall take steps to inquire into, examine and determine the legality of the construction in question,

(ii) the respondent No.1 – Corporation shall determine, after due inquiry in accordance with law, as to whether the construction in question

is legal and in accordance with applicable regulations, bye-laws, permissions, etc., or not,

(iii) while carrying out such inquiry and deciding the issue, the Corporation shall also give opportunity of calling for explanation from respondent No.3, and

(iv) after taking into account such explanation, the Corporation will independently, come to conclusions without being influenced by this order, regarding the construction in question,

(v) if at all the respondent No.1 – Corporation, after such inquiry, finds that the construction is not in accordance with applicable regulations, permission, bye-laws, etc., then, it shall take necessary actions, in accordance with law and after giving notice as well as hearing to the respondent No.3.

4. The Corporation shall undertake and complete the aforesaid exercise as early as possible and preferably within a period of 3 months from the receipt of this order. Mr. Shah, Advocate, requests for Direct Service. Direct Service permitted.

4.1 By an earlier order, by way of interim relief, direction for maintaining status-quo to all parties was granted. The said direction would

continue till the stage of decision by the Corporation, after inquiry.

5. With aforesaid directions, the petition is disposed of. Rule discharged. No order as to costs.

[ K.M.Thaker, J. ]

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